

Department of Defense

§ 9901.712

basic condition of employment at the time the appointment was made, except when the termination is taken against—

(A) A preference eligible employee who has completed 1 year under a time-limited appointment; or

(B) An employee who has completed a probationary period under a term appointment;

(9) Cancellation of a promotion to a position not classified prior to the promotion;

(10) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(11) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation;

(12) An action taken under a provision of statute, other than one codified in title 5, U.S. Code, which excludes the action from 5 U.S.C. chapter 75 or this subpart;

(13) A classification determination, including a classification determination under subpart B of this part;

(14) Suspension or removal under 5 U.S.C. 7532; and

(15) An action to terminate grade retention upon conversion to the NSPS pay system established under subpart C of this part.

(c) *Employees covered.* Subject to a determination by the Secretary under § 9901.102(b)(2), this subpart applies to DoD employees, except as excluded by paragraph (d) of this section.

(d) *Employees excluded.* This subpart does not apply to—

(1) An employee who is serving a probationary period, except when the employee is a preference eligible who has completed 1 year of that probationary period;

(2) A member of the Senior Executive Service;

(3) An employee who is terminated in accordance with terms specified as conditions of employment at the time the appointment was made;

(4) An employee whose appointment is made by and with the advice and consent of the Senate;

(5) An employee whose position has been determined to be of a confidential, policy-determining, policy-mak-

ing, or policy-advocating character by—

(i) The President, for a position that the President has excepted from the competitive service;

(ii) OPM, for a position that OPM has excepted from the competitive service; or

(iii) The President or the Secretary for a position excepted from the competitive service by statute;

(6) An employee whose appointment is made by the President;

(7) A reemployed annuitant who is receiving an annuity from the Civil Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund;

(8) An employee who is an alien or non-citizen occupying a position outside the United States, as described in 5 U.S.C. 5102(c)(11);

(9) A member of the National Security Labor Relations Board;

(10) A non-appropriated fund employee;

(11) A National Guard technician who is employed under 32 U.S.C. 709; and

(12) An employee against whom an adverse personnel action is taken or imposed under any statute or regulation other than this subpart.

REQUIREMENTS FOR REMOVAL, SUSPENSION, FURLOUGH OF 30 DAYS OR LESS, REDUCTION IN PAY, OR REDUCTION IN BAND (OR COMPARABLE REDUCTION)

§ 9901.711 Standard for action.

The Secretary may take an adverse action under this subpart only for such cause as will promote the efficiency of the service.

§ 9901.712 Mandatory removal of offenses.

(a) The Secretary has the sole, exclusive, and unreviewable discretion to identify offenses that have a direct and substantial adverse impact on the Department's national security mission. Such offenses will be identified in advance in implementing issuances, publicized upon establishment via notice in the FEDERAL REGISTER, and made known to all employees on a periodic basis, as appropriate, through means determined by the Secretary.